IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15737 of 2004

With

SPECIAL CIVIL APPLICATION No. 15545 of 2004

With

SPECIAL CIVIL APPLICATION No. 13216 of 2004

And

CIVIL APPLICATION No. 7764 of 2005 in S.C.A. No. 15545 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAIPUR (RAKHIAL) COMMERCIAL CO-OP HOUSING SOCIETY LTD & 1 - Petitioner(s)

Versus

AHMEDABAD ELECTRICTY CO LTD & 1 - Respondent(s)

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Appearance :

Mr. SN Soparkar Sr. Advocate with Mr. Amar N. Bhatt for the petitioners (In S.C.A.No.15737 of 2004)

Mr. PK Jani with MR MAYUR RAJGURU for the petitioner (In S.C.A.No.15545 of 2004)

Mr. Shaikh with Ms. Ratna Vora for the petitioner (In S.C.A.No.13216 of 2004)

Mr. KB Pujara with Mr. PRAFUL N THAKKAR for the Respondent.
RULE SERVED for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/08/2005

ORAL JUDGMENT

1.0 These three petitions raise a common question and are directed against the action of respondent – Ahmedabad Electricity Company Limited (for short, “the Company”) of insisting upon the payment of the arrears of electricity dues in respect of the power supplied to the previous owners as a condition precedent for the restoration of electric connection in the premises of the new owners. Hence, they are disposed of by this common judgment.

2.0 The facts leading to the filing of Special Civil Application No. 15737 of 2004 are as under;

2.1 The petitioner in this petition is a Co-operative Society registered under the provisions of the Gujarat Co-operative Societies Act, 1961, engaged in commercial activities and in the construction of houses for its members. Respondent no.2 herein, M/s. Ajar Enterprises Pvt. Ltd., had purchased the assets of one Raipur

Manufacturing Company Limited for Rs. 13.30 crores, pursuant to the winding-up proceedings in Company Petition No.114 of 2001 held before this Court. The said petition was filed on 14.06.2001 and it came to be disposed of on 15.10.2001.

2.2 As per the conditions of the said auction, the assets of the Company were conveyed to the petitioner Society by the Official Liquidator as per the Deed of Conveyance executed on 02.08.2004 read with the Deed of Rectification dated 01.10.2004 executed between the Official Liquidator of the Company i.e. of Raipur Manufacturing Company Limited, ICICI Bank Ltd., respondent no.2 herein – M/s. Ajar Enterprises Pvt. Ltd and the petitioner herein, and, one Shreeji (Rakhial) Commercial Co-operative Housing Society Ltd. (i.e. petitioner in S.C.A.No.15545 of 2004) by which the entire property purchased by respondent no.2 vide order dated 02.12.2004 was transferred to the petitioner - Society and Shreeji (Rakhial) Commercial Co-operative Housing Society Ltd. (i.e. petitioner in S.C.A.No.15545 of 2004).

2.3 After taking possession of the said Company, the petitioner applied to respondent no.1 - Company for the grant of electric connection for the said premises.

However, respondent no.1, vide letter dated 07.01.2004, declined to grant power supply to the petitioner, unless the petitioner pays the demand in the sum of approximately Rs. 12.3 crores claiming to be the outstanding dues in connection with the power supplied to the previous owner, i.e. Raipur Manufacturing Company Limited (in liquidation) prior to 15.07.1999.

2.4 In response to the above, the petitioner addressed letter dated 25.11.2004 to respondent no.1 claiming that in view of the judgment of the Apex Court in the case of Isha Marbles v. Bihar State Electricity Board, reported in (1995) 2 S.C.C. pg. 648 and some other judgments, the respondent Company could not insist upon the petitioner to pay up the demands due from the previous owner as a condition precedent for the release of fresh connection in view of the auction purchase.

2.5 No reply was given by respondent no. 1 to the said letter of the petitioner. The petitioner was not extended with the power supply, thereby preventing it from starting its construction activity. Since electricity connection was not released by the respondent - Company, the petitioner has approached this Court by way of this writ petition.

3.0 The short facts in Special Civil Application No. 15545 of 2004 are that the petitioner in this petition is one of the two purchasers, being purchaser no.2, of the premises of the said Raipur Manufacturing Company Limited, which went into liquidation and was wound up in Company Petition No. 114 of 2001 disposed of on 15.10.2001. On 13.08.2004, the petitioner made an application to respondent Company for the supply of power. But, the petitioner was denied electricity connection on the same grounds as stated in the aforesaid Special Civil Application.

4.0 The facts in Special Civil Application No. 13216 of 2004 are that the petitioner in this petition had purchased property belonging to one M/s. Ajit Mills Company Limited pursuant to the liquidation proceedings held before this Court in Company Petition No. 197 of 1987. The said petition was filed on 28.12.1987 and it came to be disposed of on 08.02.1994 pursuant to the winding up order passed as back as on 28.04.1989. On 28.05.2004, in order to restart the activities in the premises, the petitioner made an application to the respondent Company for release of power supply to the premises. However, the petitioner was denied electricity

connection on the same grounds as stated in the aforesaid petitions. Hence, these petitions.

5.0 Heard Mr. S.N. Soparkar with Mr. Amar N. Bhatt, Mr. P.K. Jani with Mr. Mayur Rajguru and Mr. Shaikh with Ms. Ratna Vora learned Advocates appearing for the petitioners and Mr. K.B. Pujara with Mr. P.N. Thakkar learned Advocates appearing for the respondent Company.

6.0 Mr. S.N. Soparkar learned advocate for the petitioner has contended that the petitioner Society, being the auction-purchaser of the assets of the Company in question, is not liable to pay the electricity dues of the previous owner, in the absence of their being a statutory provision in that behalf. He has submitted that the respondent Company could not have and ought not to have denied the petitioner fresh electricity connection on the ground that the dues of M/s. Raipur Mills Pvt. Ltd are not paid by the petitioner Company, in view of the law laid down by the Apex Court in the case of ***Isha Marbles v. Bihar State Electricity Board*** reported in ***(1995) 2 S.C.C. pg. 648***, and, more particularly, in view of the observations made in Paras 55 & 56 of the said decision, which read as under;

"**55**. In all the present cases the supply of electricity to a particular premises which had the benefit of enjoying electricity had been disconnected under Section 24 of the Electricity Act. The auction-purchasers want reconnection. The Board says no; unless and until the consumption charges in relation to that property which came to be incurred during the ownership of the previous incumbent are cleared off. Is that stand of the Board correct? The High Court, in the main judgment in Suman Packaging (CWJC No. 5358 of 1992) given the following reasons for answering the question against the Board;

1. Section 24 stipulates discontinuance of supply of electrical energy to the consumer in respect of a sum due from him. We are afraid the High Court had not read Section 24 in conjunction with other statutory provisions though they had been noted, namely, Section 26 of the Supply Act; Section 22 of the Electricity Act and clause VI of Schedule to the Electricity Act. They clearly postulate the obligation to supply energy for such premises. At the risk of repetition we hold that the premises had enjoyed the benefit of electricity. The owner of the premises or even the occupier of the premises, as stated under Rule 2(af) of the Indian Electricity Rules, becomes liable to pay the consumption charges together with other dues. In other words, the liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such liability will be on such owner or occupier.

56. From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. **Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matter is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party.** Of course, the bona fides of the sale may not be relevant."

(Emphasis Supplied)

6.1 Mr. Soparkar has further contended that it is well settled law that where there is power there is duty. He has submitted that in the present case no doubt the respondent Company has the power to recover the outstanding dues, but, the said power is to be exercised with responsibility. Learned counsel has submitted that the respondent Company has not exercised its power in a prudent manner at the relevant point of time, by waiting for such a long period in recovering the dues of the past owners without initiating any action, thereby resulting in the mounting of the dues, which in some cases, may even be more than the value of the property in question. Apart from the above, the debts of the Company that has gone into liquidation might in some cases would even be time-barred.

6.2 Learned counsel has submitted that before the dues had assumed huge figures, the respondent Company ought to have disconnected the power supply at the relevant point of time and initiated necessary proceedings against the defaulter. Therefore, it is now not open to the respondent Company to claim the dues from the auction-purchasers, i.e the petitioners herein, for the

negligence committed by the respondent authorities in performing its duties responsibly at the relevant point time of time.

6.3 Mr. Soparkar has relied upon a decision in the case of ***Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd and others*** reported in ***2004 AIR S.C.W. pg. 2106 = (2004) 3 S.C.C. pg.587 = 2004 (2) G.L.R. pg.1363***, and, more particularly, on the following observations made in Paras 1 & 3;

> "**1**. ..... It appears that the respondents sought for fresh connections for supply of power to the respective premises. The appellant insisted on the previous arrears being cleared. It also appears that some arrears were paid by respondents no. 1 & 2 in Civil Appeal no. 1691 of 1999. However, the supply of electricity has been resumed. The dispute is whether the respondents should be held liable to pay the arrears which were outstanding against the previous owners.
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> **3**. ..... **We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard**. Though we find some merit in the submission of the learned counsel for the appellant calling for reconsideration of the wide propositions of law laid down in Isha Marbles case, we think the present one is not a case for such exercise. We leave the plea open for consideration in an appropriate case."
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> (Emphasis Supplied)

6.4 Learned counsel has submitted that this Court in a

similar matter being Special Civil Application No. 3014 of 1998 disposed of on 24.07.1998, while adopting the principle laid down in M/s. Isha Marbles case (supra), had observed that the purchaser of a property at public auction by the State Financial Corporation cannot be made liable to pay the electricity dues of the previous consumer unless there is an agreement to that effect and that there is no allegation of relationship or complicity between the petitioner and the old owner of the premises. Learned counsel has submitted that since in the present case there is no such agreement to the aforesaid effect, the petitioners cannot be held to be liable to pay the electricity dues of the previous consumer.

6.5 The aforesaid decision was carried in Appeal being ***Letters Patent Appeal No. 1027 of 1998*** which came to be disposed of on 04.09.1998. Learned counsel has pointed out to the following observations made in the aforesaid Appeal, which reads as under;

> "Learned Single Judge, following a decision of the Honourable the Supreme Court in M/s. Isha Marbles v. Bihar State Electricity Board and anr. 1995 (2) GLH 134 (SC), allowed the petition filed by the petitioners. We do not see any infirmity in the order passed by learned Single Judge. No doubt, Mr. H.B. Shah for the appellant submitted that various points were not placed before the Honourable the Supreme Court when M/s. Isha Marbles (supra) came to be decided by the

Honourable the Supreme Court.

> In our opinion, so far as this Court is concerned, this Court is bound by the law laid down by the Honourable the Supreme Court and the learned Single Judge has correctly observed that the point is "squarely covered" by the above decision. We, therefore, do not see any merits in the LPA. LPA stands dismissed."

The aforesaid decision was challenged before the Hon'ble the Apex Court unsuccessfully.

6.6 Mr. Soparkar has next relied upon a decision of a Division Bench of this Court dated 21.10.2004 passed in ***Special Civil Application No. 2162 of 2003*** against the respondent Company, wherein the Bench has made the following observations in its order;

> "During the course of hearing, two decisions namely M/s. Isha Marbles v. Bihar State Electricity Board and anr [1995 (2) SCC 648] and Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. and ors. [2004 (2) GLH 691] are brought to the notice of this Court. These decisions clearly hold that the liability cannot be fastened on the auction purchasers/third party. **The petitioner is auction purchaser/third party in this case, therefore, Ahmedabad Electricity Co. Ltd cannot seek recovery of electricity dues from the petitioner. The contention that the property has been purchased subject to all risks would not be applicable in this case in view of the legal position discussed above**."
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> (Emphasis Supplied)

6.7 Mr. Soparkar has, therefore, submitted that the action of the respondent Company in withholding of power supply, until the dues of the previous owners are paid, is wholly unreasonable and improper and appropriate directions may be issued to the respondent Company for immediate resumption of power supply to the premises of the petitioners.

6.8 Mr. P.K. Jani appearing with Mr. Mayur Rajguru and Mr. Shaikh appearing with Ms. Ratna Vora learned Advocates for the petitioners in the respective petitions have adopted the arguments advanced by Mr. S.N. Soparkar. Learned counsel has submitted that the respondent Company's total revenue dues in S.C.A. No. 15737 of 2004 and S.C.A. No.15545 of 2004 are to the tune of Rs.12,30,16,068.54 and in S.C.A. No.13216 of 2004 are to the tune of Rs.38,58,945.84. Learned counsel has submitted that since the petitioners herein have purchased the property in question from the auction purchasers, there is no liability cast upon the auction purchasers towards the aforesaid dues of the respondent Company. Therefore, while deriving the right title and the interest over the property in question, the petitioners herein cannot be held liable towards the said dues of the respondent Company.

7.0 Mr. K.B. Pujara learned advocate appearing with Mr. P.N. Thakkar for the respondent Company has contended that in view of the provisions of Section 43 of The Electricity Act, 2003 (for short, “the Act”), dues are attached to the property and not to the consumer. The said Section 43 reads as under;

> “**Section 43 : Duty to supply on request**.-(1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply;
>
> Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission;
>
> Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.
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> (2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):
>
> Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

> (3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

7.1 Learned counsel has submitted that the aforesaid provision casts a duty on the distribution licensee that every distribution licensee shall on an application by the owner or occupier of any premises give supply of electricity to such premises. Therefore, the electricity connection and the outstanding dues in respect of the electricity connection are relatable to the premises and not to the owner or occupier of the premises alone.

7.2 Learned counsel has further submitted that as long as there are any outstanding dues of electricity connection given at particular premises, the licensee is entitled to disconnect the supply and also to keep the supply discontinued, till the entire outstanding dues are paid, as is provided in Section 56 of the Electricity Act, 2003, and therefore, the respondent Company can deny power supply to a consumer unless and until the dues of the earlier occupier are paid up.

8.0 Mr. Pujara has relied upon the definition of "Consumer" as provided in Section 2(15) of the Electricity Act, 2003, which reads as under;

> “**2(15)** : “Consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”

8.1 Learned counsel has submitted that a combined reading of Section 2(15) with Section 43, 50 & 56 of “the Act” clearly establishes that the connection to be given at any premises need to be considered with regard to the arrears of charges for electricity supplied at the said premises, notwithstanding the change in the ownership and the appropriate authority can direct clearance of such outstanding dues as a condition precedent for reconnection.

9.0 Mr. Pujara has further contended that in view of the provisions of Section 24 of the old Act, it is open to the respondent Company either to refuse power connection to the consumer or to file a civil suit before the appropriate Court.

9.1 Learned counsel has submitted that the said aspect has been considered by the Apex Court in the case of

Swastic Industries v. Maharashtra State Electricity Board reported in ***(1997) 9 S.C.C. pg. 465***, wherein it has been held that the Board's right under Section 24 of the Act to recover charges for energy and to discontinue supply of energy, if consumer neglects to pay the charges, is not taken away by Section 60-A of the Electricity Supply Act, 1948 which provides an option to the Board to file suit within the period of limitation stipulated therein for recovery of the charges.

9.2 Mr. Pujara has relied upon a Division Bench decision of this Court (Coram : Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Anant S. Dave) dated 18.07.2005 passed in ***Letters Patent Appeal No. 691 of 2003 and group matters***, and, more particularly, on the following observations made in Page 37 of the said decision;

> "..... The object of Clause 2(j) is to ensure that the Board is not deprived of the charges of electricity supplied by it. It requires the prospective buyers of electricity to deposit the outstanding dues. Those who purchase the factories and establishments by giving highest bid at the auction or otherwise are deemed to be aware that for the purpose of availing electricity supply they will have to pay the outstanding arrears and, **in our opinion, the Court cannot prevent the Board from enforcing Clause 2(j) of the Conditions of Supply, which has been enacted in larger public interest by directing the Board to file Civil Suit or application under the Companies Act. That**

alternative is always open to the Board and the applicants like the writ petitioners are free to persuade the concerned authorities to adopt that course."

10.0 Mr. Pujara has further contended that in view of the Conditions of Supply & Miscellaneous Charges of the respondent Company, and, more particularly, the provisions of Clause 17 read with Condition No. 7 of Form 'D', the respondent Company cannot guarantee that the supply of a consumer will not be disconnected for the non-payment of the consumers' energy bill, inclusive of past arrears, even if the consumer may have paid the said bill on the same day prior to the disconnection of supply. Learned counsel has submitted that it is not proper on the part of the petitioners to contend that there was negligence on the part of the Officials of the respondent Company in recovering the arrears of electricity charges of the previous owners. He has submitted that on account of the policy of the State Government of preventing the workers of the textile mills from being unemployed due to the closure of the mills, the respondent Company had not initiated any coercive measures against the mills owners.

10.1 Mr. Pujara has relied upon a decision of this Court in the case of ***Sun Chem v. G.E.B. Chairman & ors*** reported

in ***(2004) 6 G.H.J. pg. 251***, wherein it has been held that when there was an agreement between respondent no.3 and the petitioner with respect to Clause 13, the petitioner is liable to pay the dues of electricity consumption remained unpaid by the predecessor-in-title.

10.2 Mr. Pujara has next relied upon a Division Bench decision of this Court (Coram : Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Anant S. Dave) dated 18.07.2005 passed in ***Letters Patent Appeal No. 691 of 2003 and group matters,*** wherein the Bench has upheld the provision of Clause 2(j) of the Conditions of Supply, while recovering the dues of the consumer. The said Clause 2(j) reads as under;

> "***2(j) : Recovery of old dues*** :- Recovery or new connection for any premises, where there are arrears of the Board pending from the consumer/occupier, shall not be entertained. The new successor/occupier has to clear these dues of the previous consumer before the application of successor/occupier is processed for supply of electricity. If the Board at a later date, gets the full or part of these dues from the previous consumer, the amount shall be refunded to the successor/occupier after adjusting the costs including legal expenses to recover arrears and the refund shall bear no interest."

10.3 Mr. P.N. Thakkar learned advocate for the respondent has adopted the arguments of Mr. K.B. Pujara

and has relied on Clause 4.8.3 of the Gujarat Government Gazette published on 31st March, 2005, which provides that where premises to which electricity is supplied by Licensee is transferred to transferee and the transferee does not get service connection in the Premises transferred to his name, and continues to use the service connection in previous name, the transferee shall be responsible for payment of running energy bills as well as unpaid dues of energy bills and other amounts relating to the service connection. Learned counsel has submitted that the dues of the Distribution Licensee shall be payable on demand, in default of which the supply to the Premises may be disconnected, subject to the provisions of the Acts, rules and regulations for the time being in force.

10.4 Learned counsel has, therefore, submitted that the respondent Company has all rights to decline power supply to the petitioners, unless the arrears are fully paid up.

11.0 No other contentions have been raised by the learned advocates for the parties.

11.1 It is not in dispute that the properties in question were purchased by the petitioners pursuant to the

winding-up proceedings held before this Court. Thereafter, as per the orders of this Court, the Official Liquidator had executed the Sale-deeds in favour of the petitioners herein, and therefore, the petitioners are the auction-purchasers under the orders of this Court. Being the auction-purchasers, the petitioners cannot be called upon to clear the past arrears of the previous owners as a condition precedent for supplying power to their premises. Apart from the above, no suit/s were filed by the respondent Company and no objections were raised before this Court when Advertisement was given by the Official Liquidator for public auction of the properties in question.

11.2 Similar issue arose before the Apex Court in Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd and ors. (supra), wherein the Court held that where the premises comes to be owned or occupied by the auction-purchaser and when such purchaser seeks supply of electric energy, he cannot be called upon to clear the past arrears as a condition precedent to supply power. In the case of Isha Marbles (supra), the Apex Court has observed that what matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability

against the third party. Whatever the amount mentioned to have been due and recoverable, the same is due and recoverable from the erstwhile owner and the user of electricity and not from the present owner who is an auction-purchaser.

11.3 The aforesaid view has been reaffirmed in a decision in the case of **Ahmedabad Electricity Company Ltd. v. Gujarat Inns Pvt. Ltd. And ors** (supra). In my opinion, the ratio laid down in the said decision shall squarely apply on the facts of the case on hand. In that case, the respondents had sought for fresh connections for supply of power to their respective premises. The appellant-A.E.C insisted on the previous arrears being cleared. The question before the Apex Court was that whether the respondents should be held liable to pay the arrears which were outstanding against the previous owners.

11.4 The facts of the above referred case and the facts of the cases on hand are similar. In the present case, the respondent Company has insisted upon the payment of the arrears of electricity dues in respect of the power supplied to the previous owners as a condition precedent for the restoration of electric connection in the premises of the new owners. Considering the principle

laid down by the Apex Court in the aforesaid decisions, the petitioners herein, being the auction-purchasers, cannot be held liable to clear the arrears incurred by the previous owners in respect of the power supplied to the premises, in the absence of there being a specific statutory provision in that regard. There was no condition in any of the proceedings that the purchaser is liable to pay any outstanding dues of the respondent Company, if any, owed by the Company under liquidation. Hence, the ratio down in the aforesaid decision shall squarely apply to the facts of the case on hand.

11.5 The decision relied upon by the learned advocate for the respondent in ***Letters Patent Appeal No. 691 of 2003 and group matters*** shall not apply to the case on hand, since in the present case there is no condition/agreement between the parties to the effect that the purchaser is liable to pay the outstanding dues of the respondent Company if any owed by the Company under liquidation. In the aforesaid decision of the Division Bench, the parties were bound by the condition, namely Condition No. 2(j), formulated by the Board. Hence, I am afraid that the said decision also cannot come to the rescue of the respondent on account of the absence of such a condition. Such a condition would have been applicable provided that the

same was accepted by the previous owners of the premises in question. In the present case, no such condition was accepted by the previous owners of the said premises.

12.0 The next decision relied upon by Mr. Pujara in the case of Sun Chem v. G.E.B. Chairman (supra) shall also not apply to the case on hand, inasmuch as in that case, the parties were bound by Clause 13 of the auction which provided that the petitioner was liable to make payment of the due electricity consumption charges of its predecessor-in-title.

12.1 In the present case, there is no such condition between the parties by which the petitioners were made liable to pay the arrears of electricity dues in respect of the power supplied to the previous owners. Hence, the said decision also shall not apply to the case on hand.

12.2 Now, assuming even if the respondent Company has the power to recover the arrears of electricity charges of the previous owner from the new incumbent, it has to be concluded that by not recovering the amount at the relevant point of item, mistake / omission has occurred on the part of the respondent Company in not taking necessary steps at the appropriate time. On account of

the said act of omission / mistake on the part of the respondent, the petitioners cannot be held to be liable to pay the said amount of arrears. Hence, the power to recover the arrears of electricity charges has to be exercised against the original consumer and not on the new incumbent, i.e a third party. It may not be out of place to state that when this Court had advertised for the auction of the properties in question prior to the winding-up proceedings, the respondent Company could have objected to the said auction of the properties in view of the huge revenue dues of the erstwhile owners of the said properties. Having not done so, the respondent Company, cannot take advantage of their mistake / omission at this stage.

12.3 Further, even if it is presumed that the respondent Company had not initiated coercive measures for the benefit of the workers of the textile mills, the respondent Company cannot thrust upon the burden of the arrears of electricity charges on the petitioners. The petitioners cannot be made victims of such huge recovery of arrears, on account of the liberal stand taken by the State Government in that regard. Apart from the above, the arrears in question are very old and by now they have become time-barred, and therefore, the petitioners cannot

be permitted to recover the said amount of arrears by exercising powers which were not exercised at the relevant point of time.

12.4 Moreover, it is required to be noted that there is no such condition, such as Condition 2(j), in respect of the respondent Company. The State Government has not incorporated any such condition in respect of the respondent Company. In the case on hand, in the absence of such a condition, the respondent Company cannot take shelter of the provisions of its Conditions of Supply & Miscellaneous Charges in order to transfer the burden of arrears of the previous owner on the new owners i.e the petitioners herein.

13.0 Even otherwise, two Division Bench's of this Court, one in L.P.A. No. 1027 of 1998 and thereafter, in S.C.A. No. 2162 of 2003 have taken similar view in the case of the respondent Company itself, and therefore, this Court is also bound by the said decisions. Hence, I am of the opinion that the action of the respondent Company is wholly uncalled for and the respondent is required to grant fresh connection to the petitioner without insisting for the arrears of the previous owners.

14.0 In above view of the matter, respondent – Ahmedabad Electricity Company Limited, is directed to grant power supply to the premises of the petitioners without insisting upon the payment of the arrears of electricity dues in respect of the power supplied to the previous owners. The petitioners are directed to approach the respondent Company within a period of one week from the receipt of copy of this order for getting electric connection for their premises and shall also comply with all the legal procedures necessary for getting electric connection for its premises. It is expected that the respondent Company shall grant electric connection to the premises of the petitioners, as expeditiously as possible, and preferably within a period of four weeks from the date when the petitioners had approached them. The petitions stand disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs. The Civil Application also stands disposed of accordingly.

15.0 At this stage, Mr. Pujara learned advocate for the respondent Company has requested for the stay of this order for a period of four weeks from today.

16.0 It be noted that the petitioners have invested huge

amounts in these properties and that to in liquidation proceedings which were approved by this Court. Considering the fact that the law is well settled in the case of the respondent Company, when as back as in the year 1998, the Division Bench of this Court in L.P.A. No. 1027 of 1998 had rejected the Appeal preferred by the respondent Company on similar set of facts, and thereafter, in the year 2003, another petition being S.C.A No. 2162 of 2003 on similar facts was dismissed by the Division Bench of this Court, the respondent Company ought to have accepted the law declared by this Court as well as by the Apex Court, more particularly, when they are on similar counts, as in the case on hand. The respondent Company ought to have accepted the decision in its true spirit. Hence, the request made by the learned advocate for the respondent is unreasonable and the same is rejected.

(K. S. JHAVERI, J.)

pravin/ *